of the police raid only one tape was in the process of being made and taking into account the similar situation that the charge of distributing tapes did not specify the number being distributed and all the other factors that I have considered earlier, I have formed the view that the following default sentences should be adequate: first charge – one and a half months; second charge – one and a half months; third charge – four months; fourth charge – two weeks. And so I order.

Appeal allowed.

Solicitors: *Amarjit Rubin & Partners.*

MATERIAL TRADING PTE. LTD. (IN LIQUIDATION) v. DBS FINANCE LTD.

[O.C.J. (Thean J.) 15 February 1988]

[Singapore – Originating Summons No. 150 of 1987]

Land Law – Overhead cranes on steel runways – Overhead cranes not attached to buildings but steel runways attached to buildings – Whether overhead cranes fixtures or chattels.

The plaintiffs were the lessees of two plots of land. The defendants were the mortgagees of the land by virtue of four instruments of mortgages.

On the land, there were two warehouses used for the storage of hardware materials. Three overhead cranes were installed in the warehouses. The issue in the present case was whether these cranes were fixtures or chattels.

Two of the cranes had a single steel girder while the third had a double steel girder. All of them rested on end truck frames. The girders and the end truck frames were not attached to any part of the buildings but were mounted on steel runways. The wheels of each of the end truck frame rested on and moved along the steel runways. The steel runways were, however, attached to the buildings.

The liquidators of the plaintiffs sought, *inter alia*, a declaration that the overhead cranes were chattels.

Held, dismissing the application: (1) the question whether the cranes were fixtures or movables is a mixed question of law and fact depending upon the intention with which they must be taken to have been placed in the warehouses, and the circumstances mainly to be considered as indicating the intention are the degree of annexation and the object of annexation;

(2) the steel runways were an integral part of the cranes and the cranes, through the steel runways, were physically attached to the structures of the buildings;

(3) the plaintiffs in building the warehouses had the specifications of the cranes in mind and in installing the cranes therein intended that they should remain there permanently to serve the warehouses, *i.e.* moving heavy materials and articles within the warehouses;

(4) the overhead cranes were fixtures and passed to the defendants, the mortgagees.

Cases referred to:

(1) *Hutchinson* v. *Kay* (1857) 23 Beav. 413; 53 E.R. 163 (distd).
(2) *Hulme* v. *Brigham and Anor.* [1943] 1 All E.R. 204 (distd).
(3) *Holland and Anor.* v. *Hodgson and Anor.* (1872) L.R. 7 C.P. 328 (follD).
(4) *Reynolds* v. *Ashby & Son* [1904] A.C. 466 (refd).
(5) *D'Eyncourt* v. *Gregory* (1866) L.R. 3 Eq. 382 (refd).
(6) *Monti* v. *Barnes* [1901] 1 Q.B. 205 (refd).
(7) *Vaudeville Electric Cinema Ltd.* v. *Muriset* [1923] 2 Ch. 74 (refd).
(8) *Northern Press and Engineering Co.* v. *Shepherd* (1908) 52 Sol. J. 715 (distd).
(9) *Gebrueder Buehler AG* v. *Peter Chi Man Kwong & Ors.* [1987] 1 M.L.J. 356 (refd).

ORIGINATING SUMMONS.

Ng Chai Ngee for the plaintiffs.

Deborah Barker for the defendants.

Cur. Adv. Vult.

Thean J.: The facts in this case are not in dispute and, so far as material, are these. At all material times, the plaintiffs were the lessees of two plots of land, marked on the government resurvey map as lots 658 and 659 of Mukim VI situate at Enterprise Road, Singapore 2262, holding the same under an instrument of lease dated 1 September 1983 from Jurong Town Corporation for a term of 30 years commencing from 16 July 1978. Erected on the land are two warehouses, Warehouse 1 and Warehouse 2, known as No. 19, Enterprise Road, Singapore 2262. Under the lease, the land and the warehouses were to be used for "storage of hardware materials, *e.g.* steel plates, pipes and angles only". The defendants were the mortgagees of the land and premises by virtue of four instruments of mortgages all dated 22 June 1985.

Installed in the warehouses are three Kito overhead cranes, namely, two three-ton overhead cranes in Warehouse 1 and one five-ton overhead crane in Warehouse 2. Kito overhead cranes are manufactured by Kito Company Ltd. of Japan. Each of the three-ton cranes has a long steel girder with a span of approximately 18 metres and each end of the girder rests on an end truck frame. The

girders and the end truck frames are not attached to any part of the buildings but are mounted on steel runways in this way: below the end truck frames are the wheels which rest on and move along the rails on the steel runways. The steel runways, one on each side of the building, rest on and are welded to the steel beams which run horizontally overhead and lengthwise at the side along the walls of the buildings. The steel beams are in turn supported by steel columns erected vertically along the walls. The five-ton overhead crane has a double girder with a span of approximately 33 metres and in other respects are similar to the three-ton cranes and is similarly mounted on steel runways. The cranes are operated by electricity and are connected by cables to the electrical mains.

The plaintiffs went into liquidation on 17 September 1986, or thereabout, and liquidators were appointed for the purpose of the winding up. The liquidators sold the plaintiffs' movables by way of an auction, and on 4 October 1986, the three overhead cranes were sold for $12,000. The steel girders, the end truck frames and other accessories were then lifted off their runways and brought to ground level, and they were in the process of being removed from the warehouses by the purchaser when the defendants, by their solicitors, gave notice to the liquidators on 28 October 1986, objecting to such removal and claiming that the cranes were fixtures forming part of the land, and therefore are subject to the mortgages created in their favour. Discussion then ensued between the liquidators and the defendants and eventually it was agreed that those parts that were lifted off the runways be left on the ground and that in the event that the court should determine that the cranes are chattels, the defendants would pay to the plaintiffs a sum of $15,000 representing the price of the cranes and the costs of reinstalling them. Accordingly, on 9 February 1987, the liquidators instituted these proceedings for a declaration that the three overhead cranes are chattels belonging to the plaintiffs and an order that the defendants pay to the plaintiffs a sum of $15,000 pursuant to the agreement made between them.

It is submitted by Miss Ng on behalf of the plaintiffs that the cranes are not fixtures but are movables; they are not affixed in any way to the buildings but travel along the steel runways and can be easily removed without any damage whatsoever to the runways or the steel framework upon which they rest or to other parts of the structure of the buildings. Furthermore, the steel runways are capable of accommodating more than one crane, and this indicates that the cranes may easily be replaced, substituted or interchanged for use in either of the warehouses without any destruction or damage to the structure of the runways or the buildings. In support of her contentions, she relies on *Hutchinson* v. *Kay*[1] and *Hulme* v. *Brigham and Anor.*[2]

On behalf of the defendants, it is submitted by Miss Barker that the runways are an integral part of the cranes, and as the runways have been permanently affixed to the buildings, the cranes are therefore fixtures and have become a part of the buildings. In support of her contention, she relies on *Holland and Anor.* v. *Hodgson and Anor.*[3] and *Reynolds* v. *Ashby & Son.*[4] She further submits that even if the cranes are not affixed to the buildings through the runways, they are an essential part of the buildings as warehouses and a necessary adjunct to the buildings. Numerous authorities have been cited in support of this point including *D'Eyncourt* v. *Gregory,*[5] *Monti* v. *Barnes*[6] and *Vaudeville Electric Cinema Ltd.* v. *Muriset.*[7]

The question whether the cranes are fixtures or movables is a mixed question of law and fact, depending upon the intention with which they must be taken to have been placed in the warehouses, and the circumstances mainly to be considered as indicating the intention are, as stated by Blackburn J. in his judgment of the Exchequer Chamber in *Holland* v. *Hodgson,*[3] the degree of annexation and the object of the annexation: see the judgment of Collins L.J. in *Monti* v. *Barnes*[6] at p. 207. In so far as the degree of annexation is concerned, the question turns on whether the steel runways are an integral part of the cranes, and if they are, then the cranes are physically attached to and are part and parcel of the buildings. It is not in dispute that the steel runways have been permanently affixed to the buildings; indeed the plaintiffs have conceded that "the steel runways are permanently affixed to the buildings and are fixtures". The crucial question really is this: what does each of the overhead cranes consist of? As seen from the brochure of the overhead cranes, exhibited in the affidavit of Seah Kim Tee affirmed on 23 April 1987, the principal components of the cranes are the long steel girder, the chain hoists and other accessories attached to it, the end truck frames, the wheels and the steel runways. As I have just described, each end of the girder rests on the end truck frame, below which are the wheels. The whole of the girder and end truck frames move along the steel runways and the chain hoists lift or

lower articles or materials as and where directed; the cranes are operated by electricity. Plainly, without the steel runways, the cranes are incomplete and cannot operate as overhead cranes, and I am inclined to agree with the submission made on behalf of the defendants that the steel runways are an integral part of the cranes, and the cranes through the steel runways are physically attached to the structures of the buildings.

The two cases cited by Miss Ng are, in my view, distinguishable. In *Hutchinson* v. *Kay*,[1] 220 looms for weaving cotton yarn into cloth were installed in a mill. Each loom stood by its own weight resting on iron feet which were not bolted in any way to the ground. To steady the looms in operation, the feet of the looms stood in iron cups within the holes in the ground dug for the purpose. Such cups were not fastened and could be removed easily. The question before the court was whether these looms passed to the purchaser upon the sale thereof by the mortgagee and that turned on the true construction of the mortgage deed and the contract of sale which included "the machinery, fixtures and effects fixed up in and attached and belonging to the said mill or factory, buildings and premises". It was held that the looms did not belong to the mill and did not pass to the purchaser. In the second case, *Hulme* v. *Brigham*[2], the question was whether six printing machines had become part of the freehold property and therefore passed to the mortgagee thereof. The printing machines stood by their own weight and were not affixed to the floor or to any part of the building; but the apparatus driving the machines, parts of which were attached to the machines, was fixed to the freehold. On the evidence, it would be a simple matter to detach the parts of the driving apparatus fixed to the machines and the machines could be dismantled and removed without any unbolting from the floor or the driving apparatus. It was held by Birkett J. that the machines had never lost their chattel nature and were not fixtures and therefore were not comprised in the mortgage. He followed the decision of Eve J. in *Northern Press and Engineering Co.* v. *Shepherd*[8], the facts of which bore strong resemblance to the case before him. The facts of the case before Eve J. were briefly these. The owners of certain leasehold premises carried on thereat the business of printers and publishers. They took from the plaintiffs a machine on hire purchase, and subsequently defaulted in payment of instalments on the machine. The defendants, the mortgagees of the premises, took possession of the premises and the plaintiffs claimed the machine on the ground that it was a chattel. The question before Eve J. was whether it was a fixture or a chattel; he held it was the latter. He said, at p. 715:

> "It was said that it was a fixture because it was a composite machine, and the agreement (that is the hire-purchase agreement) comprised the fixed driving mechanism as well as the patented machine, and the driving apparatus was admittedly affixed to the freehold. But I think I should be introducing a dangerous principle if I were to hold that because a machine is worked by fixed mechanism therefore the machine is a fixture. I must have regard to the nature of the machine. It is complete in itself for the purpose for which it was designed, and I cannot hold that any part of the driving mechanism is part of the machine itself. Then it is said that there are direct and indirect attachments. But it is established by the evidence that not one of the direct attachments really operates to assist the machine in discharging its functions or is necessary for its stability. With regard to the indirect attachment to the motive power, if I were to hold that that constituted a fixture, then every motive power would be a connection which would change a chattel into a fixture. I should be giving too much importance to the connecting link if I were to hold that it altered the character of the machine. I hold, therefore, that the machine is a chattel and belongs to the plaintiffs."

These cases were decided on their own circumstances; in particular, in each case there was no annexation of the machine or machines to the land or premises. Physical attachment of the article in question to the land or premises, though a material circumstance, is not the sole determining factor. As Birkett J. said in *Hulme* v. *Brigham*[2] at p. 207:

> "To make these printing machines in this case fixtures, therefore, they must be annexed to the realty; and in deciding whether annexation has taken place physical attachment is only one of the considerations to be kept in mind. An article, not physically attached to the land, in certain circumstances may yet have become part and parcel of the land and have lost its chattel character. The question of annexation depends on a number of circumstances, and the cases show that each case must be considered and decided on its own circumstances, applying the principles of law which have been laid down."

We now turn to the other circumstances for consideration, namely, the object of annexation which is equally important. In law, an article may become a part of the land by its own weight and without any attachment by nail or bolt. Thus in *D'Eyncourt* v. *Gregory*[5] it was held that, amongst other things, statues, figures, vases and stone garden seats resting by their own weight were held to be fixtures on the ground that they were part of the architectural design of the house. Lord Romilly M.R. said, at p. 396:

> "With respect to the carved kneeling figures on the staircase in the great hall, and the sculptured marble vases in

the hall, they appear to me to come within the category of articles that cannot be removed. I think it does not depend on whether any cement is used for fixing these articles, or whether they rest by their own weight, but upon this – whether they are strictly and properly part of the architectural design for the hall and staircase itself, and put in there as such, as distinguished from mere ornaments to be afterwards added. There may be mansions in England on which statutes may be placed in order to complete the architectural design as distinguished from mere ornament; and when they are so placed, as, for instance, they are in the cathedral of Milan, I should consider that they could not properly be removed, although they were fixed without cement or without brackets, and stand by their own weight alone."

In *Monti* v. *Barnes*[6] the owner of a house removed the fixed grates from various rooms in the house and substituted for them "dog grates" which were of considerable weight but were not physically attached to the structure of the house; they rested by their own weight. It was held by the trial judge that the "dog grates" were placed in the house for the improvement of the inheritance and with the intention that they should become part of the freehold and were therefore fixtures. On appeal, his judgment was affirmed. Collins L.J. said, at pp. 207-208:

"With regard to the latter [the object of annexation], it is obvious that a most material consideration is the character in which a person places the article in question on the land. Here we are dealing with a case of mortgagor and mortgagee, which in this connection differs widely from that of landlord and tenant. A mortgagor bringing an article on to the mortgaged premises, although it may be after the mortgage, would generally not regard the premises as belonging to any one but himself, and would therefore be the more likely to intend the article to be for the improvement of the property from which he does not contemplate being ousted. This appears to me to be a very important consideration to be borne in mind when considering the object of annexation. Then, with regard to the degree of annexation, there was in the case of these dog grates no doubt the difficulty that there was no physical annexation; but it is clear that, as a matter of law, there may be annexation, so as to constitute a thing a fixture, by mere weight, and without any physical attachment by nails or screws or otherwise, as in the case of the movable statues forming part of the architectural design of a building, which were the subject of the decision in *D'Eyncourt* v. *Gregory*."

Again, in *Vaudeville Electric Cinema, Ltd.* v. *Muriset*[7] plush tip-up seats in blocks of four or eight attached to the floor of a cinema hall by iron standards with iron feet were held to be fixtures on the ground that they were placed there for the better enjoyment of the cinema hall. Sargant J., at p. 85, said:

"In the present case the chairs were intended for the better enjoyment of the Hippodrome as a building, and the object and effect of their annexation was the permanent improvement of the building as a place of public entertainment."

In this case, the land and premises were leased to the plaintiffs for use as warehouses for storage of hardware materials, such as steel plates, pipes, angles. According to the affidavit of Seah Kim Tee affirmed on 23 April 1987, the warehouses were constructed with steel columns affixed to and running vertically along the walls which support the high overhead steel beams running horizontally and lengthwise along the wall of the warehouses. These beams at both sides were constructed to support the runways which were welded to them. I think that in all probability the plaintiffs in building the warehouses had the specifications of the cranes in mind and in installing the cranes therein intended that they should remain there permanently to serve the warehouses: moving heavy materials and articles within the warehouses. It must be borne in mind also that these cranes are not mobile cranes, such as crawler cranes, which can be moved for use from place to place; they are fixed overhead cranes: once installed they operate within the confine of the runways in the warehouses. In other words, they are intended to serve, and they serve, only the warehouses where they were installed. They are an adjunct to the warehouses; they improve the usefulness of the warehouses and enhance their values: see *Gebrueder Buehler AG* v. *Peter Chi Man Kwong & Ors.*[9]

For these reasons, I am of the opinion that the overhead cranes are fixtures and have become part of the warehouses and therefore passed to the defendants, the mortgagees. Accordingly, the plaintiffs' application fails and is dismissed.

Order accordingly.

Solicitors: *Chan Cher Boon & Partners; Khattar Wong & Partners.*